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grounds of public policy, are expressly prohibited from enforcing. If this be law all that is necessary to free the most corrupt transaction from all objection is to obtain service on a party and get judgment in another state, and then come into a court of this state and obtain judgment by virtue of article 4, section 1, constitution of the United States and the act of Congress in pursuance of it."

THE FUNCTION OF THE "EXHIBIT" IN CODE PLEADING.—There is very little uniformity in the rules adopted by the courts of the various states in respect to the function of the familiar "exhibit" or "schedule," attached to a pleading.

One class of cases holds that where a written instrument is attached as an exhibit and is merely referred to in the body of the pleading, it nevertheless becomes a part of such pleading and may be looked to on demurrer in passing upon the sufficiency of the pleading. *Hays* v. *Dennis* (1895), 11 Wash. 360. 39 Pac. 658; *New Idea Pattern Co.* v. *Whelan* (1903), 75 Conn. 455, 53 Atl. 953; *Cranmer* v. *Kohn* (1898), 11 S. D. 245, 76 N. W. 937; *First Nat. Bank* v. *Fire Ins. Co.* (1894), 6 S. D. 424, 61 N. W. 439, overruling *Aultman* v. *Siglinger* (1892), 2 S. D. 442; *Davison* v. *Gregory* (1903), 132 N. C. 389, 43 S. E. 916.

A second group of cases holds that attachment to the pleading, reference thereto, and a distinct averment that the exhibit is made a part of the pleading, is necessary. *Elliot* v. *Roche* (1896), 64 Minn. 482, 67 N. W. 857; *Realty Revenue Co.* v. *Farm Co.* (1900), 79 Minn. 465, 82 N. W. 857; *Union Sewer Pipe Co.* v. *Olsen* (1901), 82 Minn. 187, 84 N. W. 756; *Stephens* v. *Am. Fire Ins. Co.* (1896), 14 Utah, 265, 47 Pac. 83.

A third group holds that an exhibit may in no case be made a part of a pleading as regards its sufficiency, except where it is an instrument for the unconditional payment of money only. *First Nat. Bank* v. *Engelbercht* (1899), 58 Neb. 639, 79 N. W. 556; *Lincoln Mortgage Co.* v. *Hutchins* (1898), 55 Neb. 158, 75 N. W. 538. Ohio follows this rule. See 1 KINKEAD PL. AND PR. § 57.

A fourth group holds that only an instrument upon which the action is founded may become a part of the pleading by being attached as an exhibit. *Thompson* v. *Recht* (1902), 158 Ind. 302, 63 N. E. 569; *First Nat. Bank* v. *Greger* (1901), 157 Ind. 479. 62 N. E. 21; *Murphy* v. *Branaman* (1900), 156 Ind. 77, 59 N. E. 274; *Dunham* v. *Holloway* (1895), 3 Okla. 244, 41 S. W. 140; *Grimes* v. *Cullison* (1895), 3 Okla. 268, 41 S. W. 355.

A fifth group holds that in no case whatever can an exhibit avail to aid the substantial sufficiency of a pleading to which it is attached *Hickory County* v. *Fugate* (1898), 143 Mo. 71, 44 S. W. 789; *Estate of Cook* (1902), 137 Cal. 184, 69 Pac. 1124; *Cave* v. *Gill* (1901), 59 S. C. 256, 37 S. E. 817; *Hartford Ins. Co.* v. *Kohn* (1893), 4 Wyo. 364, 34 Pac. 895.

The Supreme Court of Kentucky, in the case of *Hudson* v. *Scottish Union Ins. Co.* (1901), Ky. 62 S. W. 513, placed itself in the second of these groups. The court said in this case: "It will be seen that the plaintiff, by a specific statement, made the policy in question part of the petition to the same extent as though it had been copied therein. After a careful consideration of the authorities, we are of opinion that the policy in this case constitutes part and

parcel of the petition, and was properly considered in considering the demurrer. It may be true that a mere reference to and the filing of a paper which is the foundation of plaintiff's claim will not be considered as part of the petition in order that the same may be held to be sufficient, it being a well settled rule of law that the averments of the petition must show a right to recover, and, where the contract relied on is made part of the petition by the unequivocal averments thereof, it constitutes part and parcel thereof."

However, in the recent case of *Gardner* v. *Continental Ins. Co.* (1903), Ky. 75 S. W. 283, the court has adopted the novel view that an exhibit may be part and parcel of a pleading for the purpose of rendering it insufficient, but not for the purpose of making it sufficient. The court says: "The rule is that an exhibit will not cure a defective pleading or supply averments omitted in the pleading. But it is also the rule that in a suit on a written contract, if the contract shows that no cause of action exist, the court on demurrer will consider the exhibit. In other words, while an exhibit cannot make a pleading good, it may make it bad."

This is a very harsh and strict construction to be applied to pleadings, especially under the "code" where liberality of construction in the interests of justice has been so generally endorsed. The common law procedure can hardly afford a better example of a construction strictly hostile to the pleader.

LAPSE OF RESIDUARY GIFTS.—A few months ago a case was decided in the Supreme Court of Illinois, in which a novel rule seems to be promulgated as to the devolution of lapsed legacies. It is and for centuries has been well established that if a sole legatee dies before the testator, what he would have taken becomes a part of the residue, passing to the residuary legatees, if there was a residuary clause, and as intestate residue if there was no residuary clause. It has also been equally well established that if the residue is given to more than one, otherwise than as joint tenants, and one of them dies before the testator, the survivors are not entitled to the whole residue, their several shares being augmented by the death of one of their number; but that the part that would have been taken by the one that has died must be disposed of as intestate residue. In the case above referred to the court bases its decision on these well established rules. It is in their application that the case is peculiar. Under the will in question the testator gave to his brothers and sisters each several general legacies of different amounts, and then gave the residue to the same persons. A sister died before the testator. And it was claimed that the rest were entitled to her general legacy by virtue of the residuary clause, of course admitting that what she would have taken under that clause if she had survived did not go to them by virtue of it, but must be disposed of as intestate residue. On the other side it was contended, and the court held that, by reason of the sister being one of the residuary legatees, the lapsed general legacy could not be allowed to devolve to the residuary legatees; which it was said would cause a double lapse. *Dorsey* v. *Dodson* (1903), 203 Ill. 32, 67 N. E. 395.

A number of cases in support of the conclusion of the court are cited in the opinion; but none of them goes to anything like the extent of the decision in the case in question. The strongest case cited was the case of *Green* v. *Pertwee* (1846), 5 Hare 249; in which there was a gift of the residue of